

Members

Sen. Joseph Zakas, Chairperson
Sen. Connie Lawson
Sen. Rose Antich
Rep. John Aguilera
Rep. Robert Kuzman
Rep. Ralph Foley
James Martin
Vincent Heiny
Terry Harris
Janet Ellis
Robert Christopher
Cynthia Boll
Diane Bender
MaryEllen Kiley Bishop



PROBATE CODE STUDY COMMISSION

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MEETING MINUTES¹

Meeting Date: September 19, 2001
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Room 130
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Joseph Zakas, Chairperson; Sen. Rose Antich; James Martin; Vincent Heiny; Terry Harris; Janet Ellis; Robert Christopher; Cynthia Boll; Diane Bender; MaryEllen Kiley Bishop.

Members Absent: Sen. Connie Lawson; Rep. John Aguilera; Rep. Robert Kuzman; Rep. Ralph Foley; John Chappell.

Sen. Zakas convened the meeting at 10:20 a.m. After Commission members introduced themselves, Sen. Zakas reviewed the Commission's duties. Bill Reynolds, Indiana Department of Revenue, informed the Commission that the most recent version of

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

the Affidavit of No Inheritance Tax Due form has been circulated to the county assessors. Sen. Zakas asked counsel to send the new form to Commission members.

Sen. Zakas asked counsel to inform the Commission at the next meeting whether any technical amendments need to be made to SB 190, the bill containing the recommendations of the Commission which was passed by the General Assembly in the 2001 session.

Report of the Probate and Real Property Section of the Indiana Bar Association

Jeff Kolb, Emison, Doolittle, Kolb and Roellgen, presented the report of the Probate and Real Property Section of the Indiana State Bar Association. (The report is available at the Legislative and Information Center. See footnote 1.) Mr. Kolb made the following points:

1. The Uniform Healthcare Decisions Act should be adopted and the existing healthcare provisions in the Power of Attorney Act and Healthcare Act should be repealed.
2. The Uniform Custodial Trust Act should be adopted. The Act is similar to the Uniform Transfer to Minors Act but can apply to individuals who are over 21 years of age as well as minors.
3. Remove the limitation in the current law that allows only beneficiaries of trusts created after June 30, 1996 to change a trustee if control of the corporate trustee changes. The suggested change is to also allow trusts created before July 1, 1996 to change trustees.

Sen. Zakas asked Kerry Spradlin, Indiana Banker's Association to provide information as to what other states do with regard to this issue at the next Commission meeting.

4. Adopt legislation specifying the liability of nonprobate transferees for the transfers if the assets of the estate are insufficient. Language would be included that would not make the transferee liable for net contributions made by the transferee.
5. Trusts should be treated differently with regard to the rule against perpetuities so that perpetual trusts can be created. Indiana needs to be competitive with other states such as Illinois and Wisconsin that allow these perpetual trusts.
6. Amend the law so that a person only has to produce a will in court if a written demand is made by the personal representative or ordered by the court.
7. Statutes for interpreting trusts need to be included in the trust code, similar to the statutes interpreting probate matters in the probate code.
8. In order to provide consistency in the law, a putative father should be able to establish paternity for purposes of inheritance by following the existing law concerning executing a paternity affidavit.
9. Specify that any power incorporated by reference into a power of attorney may be modified in writing, including the power concerning making gifts. This recommendation is due to title companies who think that the only way a gift can be made is in the manner stated in the statute.
10. The law should specify how long an attorney in fact must maintain records.

Mr. Kolb recommended the Commission not adopt the changes to the cy pres doctrine that were proposed during the 2001 session, because those changes would affect the substance of the cy pres doctrine.

Principal and Income Act

Kerry Spradlin, Indiana Banker's Association, made the following points:

(1) The Association is troubled by the provision in SB 190 that was adopted by the General Assembly in the 2001 session, adding enhanced penalties for failing to recognize a power of attorney. At Ms. Spradlin's request, Sen. Zakas indicated to counsel that this issue should be put on the agenda for the next meeting.

(2) She has assembled a task force to review the Uniform Principal and Income Act and will also provide copies of the Uniform Trust Code to the task force.

(3) At least two or three bills have been prepared on the Uniform Principal and Income Act in the past. She stated that her group is hesitant to adopt it in its Uniform state because they feel some changes are needed to it. She indicated that Colorado and California have adopted it with changes and Minnesota recently adopted it after assembling a task force.

Thomas J. Quirk, Fifth Third Bank, stated that the Uniform Principal and Income Act is needed to allow trustees to diversify investments to serve the interests of both current beneficiaries and remaindermen.

Sen. Zakas asked Mr. Kolb to provide the Probate and Real Property Section's recommended changes to the Principal and Income Act to the Commission members before the October 10 Commission meeting.

Notice of Inheritance Tax Appraisal

The Commission discussed amending the law so that only the persons who request it receive notice of an inheritance tax appraisal, hearing on the appraisal, and the determination of the court. MaryEllen Kiley Bishop stated that there is an ethical problem involved because the current law allows the estate's attorney to waive notice to the beneficiaries although the attorney does not represent the beneficiaries. Jim Martin pointed out that different counties allow the attorney to waive notice in different ways, so there is no uniformity. He also stated that if the draft recommendation were adopted, a beneficiary would not be aware of the requirement of filing for notice. Vince Heiny indicated that beneficiaries should receive a copy of the inheritance tax return if there is an issue. Jim Martin pointed out that even if the notice requirement is eliminated, IC 6-4.1-12-12(a)(11) provides that heirs and devisees may receive a copy of the return from the Department of Revenue. Sen. Zakas requested counsel to mail a copy of this statute to Commission members.

Interest of subsequent childless spouse.

The Commission discussed whether to change the elective and intestate share of a subsequent childless spouse. Jim Martin explained that the reasoning behind the current law allowing the second spouse a 1/3 life interest in the real estate was to provide the surviving spouse with a place to live which he perceives is primarily an agricultural interest. In contrast, the urban interest is to set a defined interest. The current law creates a

problem as to how the surviving spouse and remaindermen will manage the house if the subsequent spouse decides to live on the real estate. Mr. Martin offered written comments he prepared for the Indiana Bar Association on this issue. (A copy of the comments is available at the Legislative Information Center. See footnote 1.) Diane Bender explained that she practices in an agricultural area and has a problem with establishing a set percentage for the interest, if this means the surviving spouse can carve out a percentage of the family land. She stated that she prefers retaining the life estate language.

Sen. Zakas suggested making a distinction between the urban and agricultural interest in the law. Jim Martin stated that if the reasoning behind the law is to provide shelter, then changing the law to an interest in the residence would further this purpose. Sen. Zakas requested Jim Martin, Jeff Kolb, and Diane Bender to put together language on this issue for the next meeting. Jeff Kolb discussed the letter sent to members by Rep. Foley concerning the interests of the second subsequent spouse. (A copy of this letter is available at the Legislative Information Center, see footnote 1). He explained that the question Rep. Foley raises is how the inheritance tax is calculated -- for instance, under the law it is unclear whether the spousal election comes in before or after the claims.

Uniform Trust Code

Dan Seitz, Bose, McKinney and Evans, representing the Community Banker's Association and the Association of Indiana Life Insurance Companies through Bose Treacy, stated that five states have looked at the Uniform Trust Code and no states have currently adopted it. He recommended that the review of the Act go slowly so as not to make mistakes. Jeff Kolb stated that a recent article in *Res Gestae* compares the Uniform Code to the current Code. Sen. Zakas asked counsel to forward copies of the article to members. Mr. Kolb stated that the Probate and Real Property Section of the Indiana Bar Association could prepare a report on the Uniform Trust Code for the next meeting of the Commission on October 10. Kerry Spradlin, Indiana Banker's Association, stated that the task force she has assembled for reviewing the Uniform Principal and Income Act will be given copies of the Uniform Trust Code to review. She stated that she will prepare a report for the next meeting.

Sen. Zakas also requested counsel to prepare a draft of items 3 through 10 of the Report of the Probate and Real Property Section of the Indiana Bar Association and send the drafts out before the next meeting. The Commission voted to request permission from the Legislative Council to meet after the Legislative Council's November 1 deadline. The meeting was adjourned at 11:40 a.m.